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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 288

LYKES BROS. STEAMSHIP CO. INC.,
Petitioner,

vs.

FRANK CANNELLA,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S ANSWER.

ARTHUR M. BOAL,
Counsel for the Petitioner.

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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The Respondent in his answer does not question the fact that there is a conflict between the decision of the Court of Appeals for the Second Circuit in this case and the decision of the Court of Appeals of the State of New York in *Muscelli* v. *Frederick Starr Contracting Co.*, 296 N. Y. 330 and that of the Court of Appeals for the First Circuit in *Vitozi* v. *Balboa Shipping Co.*, 163 Fed. (2d) 286.

The Respondent's main contention is that the issues are moot. It is true that the Respondent had an action in admiralty pending against the United States as owner *pro hac vice* of the *SS Nemaha*. That case was tried and resulted in a decree in favor of the Respondent against the United States. The United States has taken an appeal to

the Court of Appeals for the Second Circuit from the decree against it. The appeal has not yet been heard.

That decree in admiralty in the case of Respondent against the United States does not render the issues in this case moot. The Court of Appeals sent this case back to the District Court for a new trial on the issue of whether the vessel was seaworthy at the time she was delivered by the Petitioner to the United States. This action has not been discontinued or dismissed.

If the Respondent loses his case against the United States, he will then go back and try this case against the Petitioner.

It is respectfully submitted that the petition should be granted and this court resolve the conflict between the decisions of the Court of Appeals in this case and those of the New York Court of Appeals and the Court of Appeals for the First Circuit.

Respectfully submitted,

ARTHUR M. BOAL,
Counsel for the Petitioner.